

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CLYDE RAY SPENCER,

Plaintiff,

v.

JAMES M. PETERS, et al.,

Defendants.

CASE NO. C11-5424 BHS

ORDER DENYING  
DEFENDANTS' MOTION TO  
STRIKE PLAINTIFF'S SECOND  
SUPPLEMENTAL DISCLOSURE  
AND TO BAR TESTIMONY

This matter comes before the Court on Defendants' motion to strike Plaintiff's second supplemental disclosure and to bar testimony (Dkt. 143). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

**I. PROCEDURAL & FACTUAL BACKGROUND**

On June 2, 2011, Clyde Ray Spencer (Spencer) commenced this lawsuit against Defendants James Peters, Michael Davidson, and Sharon Krause as well as other individuals or government entities that have now been terminated from the case. Dkt. 1. In that complaint, Spencer makes allegations related to a quitclaim deed, the sale of his

1 home and Davidson's relationship with Shirley Spencer ("Ms. Spencer"). *See* Dkt. 1 at  
2 11. Before he took his Alford plea, on July 22, 1985, Spencer had executed an affidavit  
3 of forged endorsement, stating his signature on the deed was a forgery. Dkt. 146 at 35.

4 On December 18, 2012, the Court extended the discovery cut-off deadline from  
5 December 17, 2012 to January 8, 2012, due to Spencer's belated disclosure of multiple  
6 witnesses. *See* Dkt. 127. On January 9, 2013, the day after the close of discovery,  
7 Spencer submitted a second supplemental disclosure pursuant to Fed. R. Civ. P. 26(a)(1)  
8 disclosing Menora D. Landrum ("Landrum") as a witness expected to testify at trial. Dkt.  
9 146. Landrum is a former employee of Clark County Sheriff's office who, in 1985, was a  
10 licensed notary for the state of Washington. *Id.* at 42-43. She is expected to testify that  
11 the signatures of her name on the quitclaim deed to Spencers' former home were forged;  
12 that she had never visited Spencer in jail; that she did not witness him signing the deed;  
13 that she did not notarize his signature; and that she kept her notary stamp in an unlocked  
14 drawer. *Id.* at 42-43.

15 On January 23, 2013, Defendants filed the instant motion to strike Spencer's  
16 second supplemental disclosure pursuant to Fed. R. Civ. P. 26(a)(1) and bar the testimony  
17 of witness Landrum. Dkt. 143. On February 4, 2013, Spencer filed a brief in opposition.  
18 Dkt. 145. On February 8, 2013, Defendants replied. Dkt. 148.

## 19 II. DISCUSSION

### 20 A. Parties' Arguments

21 Defendants maintain that Spencer's disclosures are untimely for two reasons. First,  
22 Spencer's complaint alleges improprieties in connection with the sale of his home and

1 demonstrate that he and his counsel knew of the existence of the quitclaim deed at the  
2 time of filing. Dkt. 143 at 3. Second, Defendants argue that Spencer did not disclose any  
3 witnesses in connection with the deed until after the discovery date. *Id.* at 3.

4 Defendants further contend that this disclosure is prejudicial. They argue that  
5 dispositive motions were due by January 16, 2012; Defendants timely filed those  
6 motions; and it would be prejudicial to allow Spencer to introduce a new witness in a  
7 manner which prevented Defendants from conducting discovery and addressing the  
8 witness's knowledge in their now pending motions. *Id.* Defendants also argue that  
9 forcing them back into discovery to depose Landrum would be prejudicial because they  
10 are focused on complying with the other pretrial deadlines, which the Court has ordered  
11 shall "remain the same." *Id.* (citing Dkt. 127 at 4).

12 Spencer argues that their disclosure is timely. Dkt. 145 at 1-7. He claims that at  
13 Ms. Spencer's December 16, 2012 deposition she provided newly discovered evidence  
14 that was hidden over decades (*id.* at 5-6), testifying that she had given the deed to Krause  
15 and asked her to have Davidson procure Spencer's signature. *Id.* at 2. Thereafter, their  
16 investigator began to search for the notary. Additionally, Spencer maintains the  
17 disclosure was timely because on December 17, 2012, he executed a declaration that his  
18 signature on the deed was forged and served the declaration and a copy of the deed on  
19 opposing counsel, essentially arguing that process is equivalent to disclosing the notary  
20 as a witness. *Id.* at 6.

21 Even if his disclosure was untimely, Spencer maintains that his "failure to  
22 supplement his disclosure in a timely fashion is substantially justified," and to "hold

1 otherwise would be to penalize Plaintiff for failing to ferret out the apparent fraud  
2 perpetrated in connection with the quitclaim deed.” *Id.* at 7 (*citing Wechsler v. Macke*  
3 *International Trade, Inc.*, 221 F.R.D. 619 (C.D. Cal. 2004)). Finally, Spencer maintains  
4 any prejudice can be alleviated by having Defendants depose Landrum. *Id.* at 8.

5 Defendants reply that Shirley Spencer’s deposition provided no “new  
6 information,” which “suddenly made the quitclaim deed relevant,” as Spencer’s response  
7 reveals that the deed had been in the public record with Clark County Auditor’s Office  
8 since 1985. Dkt. 148 at 2 (*citing* Dkt. 146 at 36-39). Given the allegations in the  
9 complaint, Defendants argue Spencer’s counsel should have endeavored to locate the  
10 deed in time to timely supplement disclosures. *Id.* at 3. Defendants maintain that unlike  
11 the case cited by Spencer, Defendants did not intentionally withhold evidence from  
12 Plaintiff. *Id.* at 4-5 (*citing Wechsler*, 221 F.R.D. 619 (C.D. Cal. 2004)).

13 **B. Court’s Conclusion**

14 The Court finds that Spencer’s failure to supplement his disclosures, indentifying  
15 Landrum as a witness, was not timely. From the outset of this case, as evidenced by  
16 Spencer’s complaint, Spencer and his counsel were aware that alleged improprieties in  
17 connection with the quitclaim deed to his home formed a part of his case. Additionally,  
18 the deed was public record for approximately thirty years, and Spencer had executed an  
19 affidavit of forged endorsement in 1985, indicating that he took issue with the deed long  
20 ago. With reasonable diligence, this newly disclosed information regarding the deed  
21 could have been pursued and disclosed before January 9, 2013.

